IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION Nos.10297 of 1999, 10298 of 1999, 10299 of 1999, 10300 of 1999, 10301 of 1999, 10302 of 1999 and 10304 of 1999.

For Approval and Signature:

Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL HARSHADKUMAR BABULAL

Versus

DISTRICT PRIMARY EDUCATION 3RD SPECIAL LAND ACQUISITION

Appearance:

MR PS PATEL for Petitioner

MR ANANT S DAVE for Respondent No. 1

Mr.A.D. Oza, GOVERNMENT PLEADER for Respondent nos.2 and 3.

CORAM : MR.JUSTICE R.R.TRIPATHI

Date of decision: 05/05/2000

COMMON ORAL JUDGEMENT :

Mr.P.S. Patel, learned advocate for the petitioners points out that the case is having a little checkered history, which is as under :

The petitioner had passed SSC & PTC Examinations in the year 1988- 89 and 1989- 90 and that they were qualified and eligible to be appointed as Primary Teachers/ Vidya Sahayak. However, the petitioners remained unemployed till this date. In the year 1992, respondent no.1 issued advertisement for recruitment to fill up 450 vacancies of primary teachers then existing. It is the case of the petitioners that they applied for the same and were called for oral interviews held in 1992. (July and August). While the aforesaid oral interviews were in progress in August 1992, this Court granted stay in Special Civil Application No.5703 of 1992 on or about 9.8.1992, whereby the respondents were restrained from finalising the select list of the recruitment process of the year 1992. The said stay continued upto 1997 and the same came to be vacated only on 23.4.1997. It is important to note that while vacating that stay, this Court passed an order as under:

> "In the result all these Special Civil Applications are disposed of with the direction that the respondents are at liberty to finalise select list in pursuance of the advertisement dated 2.1.1992 and make appointments in accordance with law."

It is the case of the petitioners that despite the above order the respondents did not comply with the same and did not issue appointment orders to the candidates of the 1992 select list. Hence aggrieved of the same, the candidates are constrained to approach this Court by filing Special Civil Application No.4444 of 1997 and other matters, which are pending. In Special Civil Application No.4444 of 1997, this Court passed interim order dated 25.11.1997, a copy of which is at Annexure 'A' to this petition. This Court by the said interim order directed that respondent no.1 shall finalise the select list pursuant to the advertisement issued on 2.1.1992 and the interviews held in July and August 1992 and it was also directed by the said order that,

> "The select list should not contain more than 450 candidates and all the selected candidates be offered appointments as primary school teachers. Appointment of such persons shall be ad hoc and subject to the result of this petition. .. .."

2. It is also on record that the said interim order was carried in appeal and the said appeal came to be disposed of in view of the Govt. Resolution bearing no.PRI- 1398 CC 294K dated 31.8.1998, whereby the scheme

of Vidya Sahayak was evolved. The Letters Patent Appeal was disposed of by observing that,

> "In view of the above Govt. Resolution, this Appeal does not survive and is disposed of without observing anything on merits."

The effect of both the orders discussed hereinabove is to the effect that the direction so far as preparation of select list is concerned it should not contain more than 450 candidates, still survives. Not only that it is also made clear in the order by the learned Single Judge that the candidates who are selected are required to be offered appointments as temporary school teachers and that the appointment of such persons shall be ad hoc and subject to the result of that petition. In the present Special Civil Application, once again same issue is agitated inasmuch as it is the case of the petitioners that respondent no.1 has prepared the select list of only 430 candidates as against the vacancies of 450 candidates. It is the submission of Mr.Patel that normally the select list is prepared with a waiting list of at least 20% of the vacancies to ensure that in case the persons in the select list do not report, the candidates from the waiting list can be given appointment.

3. Shri Anant S. Dave, the learned advocate for the respondent no.1 submits that a list of 430 candidates is prepared because the candidates belonging to scheduled caste were not available. It is further the case of the petitioners that out of 430 candidates selected, only 127 selectees have shown their willingness to get appointment as Vidya Sahayak and thus, there are still 303 vacancies of the year 1992. The request of the petitioner is that the respondent authorities, namely, the District Primary Education Officer, Kheda be directed to consider the case of the petitioners in light of the aforesaid facts.

4. The request of Mr.Patel for the petitioner is reasonable. Hence the same is granted. Respondent no.1, namely, District Primary Education Officer, Kheda is directed to consider the case of the petitioner in light of the aforesaid facts, namely, the stay granted by this Court came to be vacated on 23.4.1997, when those Special Civil Applications came to be disposed of with the direction that the respondents are at liberty to finalise select list in pursuance of the advertisement dated 2.1.1992 and make appointments in accordance with law and thereafter, this Court passed an interim order in Special Civil Application No.4444 of 1997 directing the select

list should not contain more than 450 candidates and all the selected candidates be offered appointment as primary school teachers. Mr.Patel, the learned advocate for the petitioners states that the case of the petitioners is required to be considered by the authorities in light of these facts and in the alternative, the case of the petitioner may be considered by Vidya Sahayak Committee, and that the petitioners' grievances may be redressed.

5. The petitioner shall file a representation before respondent no.1, i.e. District Primary Education Officer or in the alternative before the Vidya Sahayak Committee, latest by 21st June 2000 and the respondents shall consider the said representation of the petitioner within six weeks thereafter. The authorities shall communicate their decision to the petitioner by Registered Post A.D. It will be open to the petitioner to agitate the grievance in case any grievance survives thereafter.

6. This order is passed without prejudice to the rights and contentions of the petitioners in each of the petitions, which may be agitated in case the dispute is not resolved by the present direction.

7. The petitions are disposed of with the aforesaid directions. Rule is made absolute to the aforesaid extent only. No order as to costs.

(Ravi R. Tripathi, J.)

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